

### REMARKS

This document is submitted in response to the Final Office Action dated March 22, 2006 ("Office Action").

Applicants have amended claim 1. Support for the amendment can be found in the Specification, e.g., at page 11-12. No new matter has been introduced. Pursuant to the restriction requirement of July 27, 2005, claims 7-45 were withdrawn.

**The amendment, made solely to more particularly point out and distinctly claim the subject matter of this invention, should be entered as it raises no new issues that require further consideration or search and it also does not touch the merits of the application within the meaning of 37 C.F.R. § 1.116(b).**

Upon entry of the proposed amendment, claims 1-6 will be pending. Reconsideration of these claims is requested in view of the following remarks.

#### Rejections under 35 U.S.C. § 112, first paragraph

Claims 1-6 are rejected for lacking written description and enablement.

Claim 1 covers a recombinant baculovirus having an intact p35 gene, and infects permissive host cells without lyzing the cells.

The Examiner contends that the Specification lacks written description for the claimed genus of baculovirus of claim 1. See the Office Action, page 4, lines 7-10. In particular, the Examiner states that, although the Specification describes 20 specific clones of non-lytic recombinant baculovirus, these clones do not comprise a representative number of species. See the Office Action, page 4, lines 10-14. The Examiner further explains that the Specification does not provide any correlation between the functional characteristics (i.e. non-lytic phenotype) and the structure (i.e. genetic mutation) of the claimed baculovirus. See the Office Action, page 4, lines 1-4. On the other hand, the Examiner points out that the Specification contains adequate written description for the 20 clones disclosed therein. See the Office Action, page 3, lines 14-16.

Applicants have thus amended claim 1 to recite a recombinant baculovirus that is A1, A2, A3, C4, 1028, 1044, 1053, 1071, 1081, 1085, 1091, 1094, 3058, 3074, PN8, PN9, PN19, PN23,

PN24, or PN121. As stated by the Examiner, there is adequate written description for these 20 clones. Thus, amended claim 1 satisfies the written description requirement.

The Examiner further asserts that claim 1 is not enabled because undue experimentation would be needed to practice the claimed baculovirus, given that the mutations causing the non-lytic phenotype are not disclosed. See the Office Action, e.g., pages 4-7. However, the Examiner states that the Specification does enable the 20 clones disclosed therein. See the Office Action, page 5, lines 15-18. Applicants have amended claim 1 to recite only these 20 clones, so that claim 1 satisfies the enablement requirement.

The Examiner notes that Applicants need to deposit the 20 clones to comply with the requirements of 37 C.F.R. §§ 1.801-1.809. Applicants submit that they intend to make the deposits after allowance of this application and before the issuance of a patent from it.

Therefore, Applicants assert that amended independent claim 1 and claims 2-6 dependent from it comply with the requirements of 35 U.S.C. § 112, first paragraph. Based on the foregoing remarks, Applicants respectfully request the Examiner to withdraw the rejections.

Rejection under 35 U.S.C. § 112, second paragraph

Claims 1-6 are rejected as indefinite.

The Examiner contends that the phrase “contains an intact p35 gene” is unclear. See the Office Action, page 7, lines 17-18. Specifically, the Examiner states that, because “intact” is not defined in the Specification, it is unclear whether “intact p35 gene” covers mutated and wild-type p35 genes. See the Office Action, page 7, lines 18-22.

Applicants respectfully disagree. MPEP 2111.01 states that a claim word must be given its ordinary and customary meaning unless otherwise defined by the specification. The MPEP further explains: “It is the use of the words in the context of the written description and customarily by those skilled in the relevant art that accurately reflects both the ‘ordinary’ and the ‘customary’ meaning of the terms in the claims.” The Specification distinguishes the baculovirus of this invention from the p35 mutants disclosed in *Lee et al.* (Journal of Virology, 1998, a copy of which is attached herewith) in that the baculovirus has an “intact” p35 gene. See page 11, lines 14-15. *Lee et al.* specifically teaches baculovirus carrying a mutated or deleted p35 gene. See e.g., at page 9159, right column. In view of the phrase’s usage in the context of

the written description, a person ordinarily skilled in the art would understand that an “intact p35 gene” is a wild-type p35 gene that is neither mutated nor deleted. Therefore, the phrase “contains an intact p35 gene” is clear.

Accordingly, Applicants submit that amended independent claim 1 and claims 2-6 dependent from it, comply with the requirements of 35 U.S.C. §112, second paragraph. Based on the foregoing remarks, Applicants respectfully request the Examiner to withdraw the rejection.

#### CONCLUSION

Applicants submit that the grounds for the rejections asserted in the Office Action have been overcome, and that the pending claims are described, enabled and definite. Thus, allowance of this application is proper, and early favorable action is solicited

No fee is believed due. Please apply any charges to deposit account 06-1050, referencing attorney docket 08919-103001.

Respectfully submitted,

Date: \_\_\_\_\_

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